



Billing Code 3410-08-P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Docket No. FCIC-11-0008

RIN 0563-AC35

Common Crop Insurance Regulations; Pecan Revenue Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations, Pecan Revenue Crop Insurance Provisions. The intended effect of this action is to provide policy changes and clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. The proposed changes will apply for the 2014 and succeeding crop years. Policyholders are hereby given notice that 2013 will be the last year coverage will be available under the old Pecan Revenue Crop Provisions. The Pecan Revenue Special Provisions will modify the Pecan Revenue Crop Provisions for the 2013 crop year by changing the definition of two-year coverage module to one crop year. This change through the Special Provisions will be applicable to policyholders beginning the first year of a two-year coverage module in the 2013 crop year. All producers who choose to purchase coverage on pecan acreage for the 2014 crop year will begin a new two-year coverage module under the terms and conditions of the revised Pecan Revenue Crop Provisions. Requiring all producers to start a new two-year coverage module for the 2014 crop year under the terms of the revised Pecan Revenue Crop Provisions will provide equitable treatment of pecan producers by allowing all pecan producers to be eligible for the same benefits

beginning in the 2014 crop year and will simplify the administration of the transition to the modified program.

DATES: This rule is effective [insert date 30 days after this rule is published in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO, 64141-6205, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the Office of Management and Budget.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563-0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the

regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of

administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC directing the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11, or 7 CFR part 400, subpart J for determinations of good farming practices, as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background:

This rule finalizes changes to the Common Crop Insurance Regulations (7 CFR part 457), Pecan Revenue Crop Insurance Provisions (7 CFR 457.167) that were published by FCIC on November 17, 2011, as a notice of proposed rulemaking in the Federal Register at 76 FR 71276 – 71280. The public was afforded 60 days to submit comments after the regulation was published in the Federal Register.

A total of 50 comments were received from 3 commenters. The commenters were an insurance provider, an insurance service organization, and a producer organization.

The public comments received regarding the proposed rule and FCIC's responses to the comments are as follows:

General

Comment: A commenter stated they support the proposed regulation.

Response: FCIC thanks the commenter for their review of the proposed rule and their support.

Comment: A few commenters stated they have no objection to replacing the “lowest available dollar span” with the “T-Revenue” (to be developed by FCIC to represent a similar value according to the background information in the proposed rule) throughout the Crop Provisions in order to “facilitate the implementation of a continuous rating methodology to be consistent with other policies.”

Response: FCIC thanks the commenters for their review and support of this proposed change.

Comment: A commenter requested the Special Provisions be amended to reflect an April 1st acreage and production reporting date. The commenter stated that it is not uncommon for groves and leases to change control during the month of March. This change would eliminate a portion

of those groves that are lost after acreage reporting time each year leaving the insured to pay full premiums for coverage on orchards for which they no longer have insurance. The transfer of indemnity is an option, but rarely used by producers. Having cared for the grove and invested time, money, and labor in the prior years improving the grove, the producer is left without any benefit of the current year's crop and without any benefit of the crop insurance for which he must pay full price. If it is not feasible to implement some form of pro-rating of the premium (even if limited to the first 90 days after the current reporting date) then we suggest a later acreage reporting date may be more suitable and beneficial to the insured.

Response: The Crop Provisions require production and gross sales from the previous two crop years to be reported by the acreage reporting date for the first year of the two-year coverage module. Acreage reporting dates are located in the actuarial documents, and therefore, are not changed through the Crop Provisions. However, FCIC is consolidating acreage reporting dates because of the Acreage Crop and Reporting Streamlining Initiative (ACRSI) project, which has an objective of using common standardized data and terminology across USDA agencies to consolidate and simplify reporting requirements for farmers. As a result of the ACRSI project the acreage reporting date for pecans has been moved to March 15 in the states of Alabama, Arizona, Florida, Georgia, and Mississippi for the 2013 crop year. Additionally, for the 2013 crop year the acreage reporting date for pecans has been moved to May 15 in the states of New Mexico, Oklahoma, and Texas. This will allow additional time for producers to make their decisions regarding their groves, but for the purposes of consistency FCIC could not move the acreage reporting dates to April 1.

Section 1 - Definitions

Comment: In regard to the definition of “approved average revenue per acre” a few commenters stated according to the background information in the proposed rule, the proposed

change from a ten-year base period to a six-year base period is based on a recommendation from a contracted study that found a shorter base period works at least as well and “will be more responsive to market trends and changes in the productive capacity of the trees.” The background information also indicates that the six-year base period is “better for predicting actual yields for some perennial crops.” The commenters questioned whether this applies to the crop of pecans as this was not specifically indicated in the background information.

Response: FCIC agrees the background information in the proposed rule does not indicate the referenced study applies specifically to pecans. The report produced from the study did not specify which perennial crops were analyzed to determine the effect of a shorter base period. However, the concept is the same for pecans as it is for any other perennial crop because it is based on the premise that the productive capacity of a tree changes over time. The productive capacity of a tree generally increases over time until the tree reaches a maximum productive capacity and then production begins to decline. However, events can occur during the life of a tree that can change the productive capacity of that tree. Because the productive capacity of a tree changes over time, the most recent few years of production data provides the best indication of the current productive capacity of a tree. This means that a shorter base period will be more responsive to changes in the productive capacity of a perennial crop than a longer base period. While the Pecan Revenue program uses the revenue history to determine the guarantee rather than production history, the production history is part of the revenue history. Although there are other forces that can affect revenue, the production capability of the trees is an important factor in establishing the revenue.

Comment: A few commenters stated that according to the definition of “approved average revenue per acre,” the average of the four or six years of sales records and/or T-revenue is subject to no adjustments before becoming the “approved average revenue per acre.” The

commenters question if this is correct.

Response: FCIC disagrees the “approved average revenue per acre” is not subject to adjustments. Although, the definition of “approved average revenue per acre” does not indicate the adjustments, the “approved average revenue per acre” may be adjusted in accordance with the terms of the Crop Provisions. Sections 3(d) and 3(f)(2) provide exceptions that allow the amount of insurance per acre to be adjusted within the two-year coverage module. No change has been made to the final rule.

Comment: A few commenters suggested rewording the definition of “approved average revenue per acre” to read, “The total of your average gross sales per acre based on the most recent consecutive four or six years of sales records and dividing that result by the number of years of average gross sales per acre.”

Response: FCIC disagrees with the commenters that this section should be reworded. The suggested rewording could change the meaning of the definition to allow a choice of either four or six years of sales records to be used to calculate the “approved average revenue per acre” regardless of the number of years of sales records in the database. This differs from the proposed provision that requires four year of sales records to be used in the calculation unless six years of sales records are available. If six years of sales records are available six years must be used in the calculation. Therefore, the first sentence of the definition “approved average revenue per acre” cannot be revised as suggested. No change has been made to the final rule.

Comment: A few commenters concurred with the proposed deletion of the pecan-specific definition of “enterprise unit” since it was essentially the same as the definition in the Basic Provisions, which as noted in the background information in the proposed rule, includes a reference to meeting the requirements of section 34 of the Basic Provisions. The commenters stated if optional units are not added, then a modified version of this definition may need to be

retained.

Response: FCIC thanks the commenters for their review and support of this proposed removal of the definition of “enterprise unit.” Although FCIC agrees the requirements to qualify for enterprise units should be consistent with the requirements in the Basic Provisions, the Basic Provisions do not provide requirements to qualify for enterprise units when non-contiguous land is the basis for optional units. Therefore, FCIC has revised section 2(a)(1) to state that requirements to qualify for enterprise units will be based on the producer having two or more parcels that meet the definition of non-contiguous land and two or more parcels must have at least the lesser of 20 acres or 20 percent of the insured crop acreage in the enterprise unit.

Section 2 – Unit Division

Comment: A few commenters stated that the proposed Crop Provisions are not entirely clear on how optional units will be handled within the two-year coverage module. The provisions in sections 2(a), 2(a)(3)(ii), 2(a)(3)(iii), and 3(d)(1) seem somewhat contradictory. The section 2(a) lead-in [“For both years of the two-year coverage module a unit will be.”] to 2(a)(3) indicates that if the insured qualifies for optional units for the first year of a two-year coverage module, the same optional unit structure would apply for both years of that module regardless of what happens during that module. Section 2(a)(3)(ii) requires that “Separate records of production are provided for at least the most recent consecutive two crop years” to qualify for optional units for the current two-year coverage module, which fits the definition of “two-year coverage module” that the same coverage applies for both years of the module. Section 2(a)(3)(iii) also states that optional units will be established “by the acreage reporting date of the first year of the two-year coverage module” but goes on to indicate that “Units...may be adjusted or combined to reflect the actual unit structure when adjusting a loss.” The commenters questioned if this means that a Pecan Revenue policy could have optional units for the first year of the module, but then have

those units combined into basic units the second year of the module if it is discovered at loss time that the production was commingled (meaning the units are not the same for both years of the module). Or would that discovery result in the retroactive combining of optional units for the first year of the module as well, even if separate records by optional unit were maintained that first year? If so, this would present a number of difficulties. Section 3(d)(1) states that failure to provide acceptable records for optional units “will result in optional units being combined into basic units at the time of discovery and your amount of insurance per acre will be recalculated for the two-year coverage module.” The commenters stated, this would seem to indicate that the unit structure would be revised retroactively to the first year of the module (unless it is referring only to the recalculation of the amount of insurance), except that the lead-in from 3(d) is that “Your amount of insurance per acre will remain the same... for each year of the two-year coverage module unless.” The word “unless” would indicate that the situation described in 3(d)(1) is one of the exceptions where the policy terms and coverage are not the same for both years of the coverage module.

Response: FCIC agrees the lead-in paragraph for section 2(a) appears to create a conflict with sections 2(a)(3)(iii) and 3(d)(1) by stipulating the unit structure will be the same for both years of the two-year coverage module. The provisions in sections 2(a)(3)(iii), 3(d)(1) and 13(b)(1) provide exceptions to the general rule that the unit structure will remain the same for both years of the two-year coverage module. Therefore, FCIC has revised section 2(a) by adding the phrase “except as provided in these Crop Provisions” to the beginning of the provision. The provisions in sections 2(a)(3)(iii), 3(d)(1), and 13(b)(1) are intended to require an adjustment to the unit structure and amount of insurance for the current crop year and for the subsequent crop year of the two-year coverage module (provided another crop year remains in the two-year coverage module), if it is discovered that separate acceptable records were not maintained for

optional units. The provisions in sections 2(a)(3)(iii), 3(d)(1), and 13(b)(1) are not intended to require the unit structure or amount of insurance to be revised retroactively for the first year of the two-year coverage module if separate acceptable records for optional units were maintained in the first year of the module, but not for the second year of the two-year coverage module. The provision in section 3(d)(1) has been revised to clarify that if you fail to provide acceptable records necessary to determine a loss for optional units, optional units will be combined to reflect the actual unit structure at the time of discovery and your amount of insurance per acre will be recalculated for the current crop year and the subsequent crop year of the two-year coverage module (provided another crop year remains in the two-year coverage module). The provision in section 13(b)(1) has been revised to clarify that if it is discovered at the time of loss that separate acceptable records were not maintained for optional units, the actual unit structure determined at the time of loss will be the unit structure for the current crop year and the subsequent crop year of the two-year coverage module (provided another crop year remains in the two-year coverage module).

Comment: A few commenters stated that if the new optional unit provisions are implemented, consider consolidating 2(a)(3) and 2(b) since both deal with optional units as available for Pecan Revenue.

Response: FCIC agrees 2(a)(3) and 2(b) should be combined since they both are in lieu of provisions contained in section 34 of the Basic Provisions. FCIC has revised section 2(a)(3) to state that the provisions are in lieu of sections 34(b) and (c) of the Basic Provisions. With this revision to section 2(a)(3), the provision in section 2(b) is not necessary because provisions that allow optional units by section, section equivalent, FSA farm serial number, and irrigated, non-irrigated and organic farming practice are contained in section 34(c) of the Basic Provisions. FCIC has revised the provisions and redesignated the subsections accordingly.

Comment: A few commenters stated that according to the background information in the proposed rule, the proposed change to allow optional units by non-contiguous land was requested by producers and “Premium rates will be adjusted to compensate for any additional risk associated with optional units.” The commenters stated the members (of their organization) they have heard from so far have objected to this proposed change and expressed concern with the consequences of allowing optional units for Pecan Revenue, and anticipate other insurance providers will feel the same. Based on past experience, keeping production records to maintain optional units for crops like pecans is very difficult. With crops like pecans, many of the producers are also processors. They are not going to shut down the processing plant to maintain option unit records. They are going to dump pecans into a big bin and keep running the shelling plant in such a manner that they lose their identity. Furthermore, current appraisal methods are inadequate for tracking production for purposes of optional units. Appraisals are more difficult for pecan orchards than for other crops because you can have producing and non-producing trees in the same orchard, depending on variety. Pecan trees also have varying maturity dates by variety which can be greatly affected by weather conditions. In addition, when harvesting pecans, the trees may have suffered weather stresses that result in harvesting three or more times per season so tracking the cleaned production back to an optional unit by appraisal is problematic. Optional units will have a negative effect on the program experience for this crop program. The experience has been favorable in recent years primarily as a result of the high prices since many orchards have had low yields. However, tracking production back to optional units will be extremely difficult and likely result in adverse program experience.

Response: FCIC understands the concerns of the commenters that allowing optional units by non-contiguous land will result in a negative effect on program experience because of the difficulty of maintaining separate production records. However, the problems cited mostly

involve the producer's ability to meet the requirements of maintaining separate records for each optional unit. Those producers who are unable to maintain separate records should not elect optional units. Further, the problems discussed are no different than for other perennial crops that allow optional units. Producers who choose to elect optional units are certifying they can provide acceptable separate records for optional units. Provisions have been added to require optional units to be combined and the amount of insurance to be recalculated if the producer cannot provide separate production records. In addition, premium rates will be adjusted to reflect any additional risk caused by offering optional units. Those producers not electing optional units will not be subject to any rate increases for the additional risk posed by optional units. No change has been made to the final rule.

Comment: A few commenters stated they currently have pecans set up on a single database for irrigated versus non-irrigated on a county basis. If optional units are added, guidelines will need to be provided as to how records should be split out if a producer wants to elect optional units. The commenters ask whether FCIC will want insurance providers to maintain separate optional unit databases within the basic unit/enterprise unit structures like what is now being required in the 2012 Crop Insurance Handbook since this would now be an option under these provisions.

Response: To qualify for optional units producers will have to be able to provide production records for each optional unit from at least the most recent consecutive two crop years. Separate databases will have to be established for each optional unit. Additionally, producers will be required to maintain separate records for the irrigated and non-irrigated acreage within the optional units. FCIC will provide additional guidance in the Crop Insurance Handbook as to how databases should be established and maintained.

Section 3 – Insurance Guarantees and Coverage Levels for Determining Indemnities

Comment: A few commenters stated to consider revising section 3(a) by rearranging the phrases in the second sentence to read, “You may change the coverage level for the succeeding two-year coverage module by giving us written notice not later than the sales closing date of the next two-year coverage module.”

Response: No changes were proposed to section 3(a) and the proposed change does not address a conflict or vulnerability in the provision. Therefore, FCIC cannot consider the recommended change because the public was not provided an opportunity to comment on the requested change. No change has been made to the final rule.

Comment: A few commenters stated if section 3(d)(1) is not an exception where the unit structure might be different the first and second years of the module, perhaps this should be added instead to section 3(f), which also deals with whether the insured does or does not report the gross sales timely.

Response: FCIC disagrees the provision in section 3(d)(1) should be moved to section 3(f). As stated above, FCIC has revised section 2(a) to make it clear that section 3(d)(1) is an exception to section 2(a). Therefore, this provision has not been moved.

Comment: A few commenters stated if optional units are added to the Pecan Revenue policy, perhaps some reference should be added to section 3(f)(1) to address the effect on optional units if the insured does not report gross sales timely (besides having an assigned gross sales amount). In order to be consistent with other crop programs, producers would not be eligible for optional units if the most recent previous two years of gross sales were not reported.

Response: FCIC agrees with the commenters. A statement has been added to section 3(f)(1) to clarify that if producers do not report the gross sales from the two previous years by the acreage reporting date for the first year of the next two-year coverage module, they will not be eligible for optional units for both years of the two-year coverage module.

Comment: A few commenters stated to consider revising section 3(f)(2) to read “we will readjust your average gross sales per acre for the next two-year coverage module” instead of “next crop year.”

Response: Although no changes were proposed to section 3(f)(2), the commenter has identified a potential conflict between the provisions in section 3(d) and section 3(f)(2). Section 3(d) states “your amount of insurance per acre will remain the same as stated in the Summary of Coverage on each unit for each year of the two-year coverage module unless...” but does not provide an exception to allow a revision to the approved average revenue per acre for failure to timely report gross sales. The provision in section 3(f)(2) states that “if your gross sales are reported after the acreage reporting date for the two-year coverage module, we will readjust your average gross sales per acre for the next crop year.” Therefore, to prevent a conflict between these provisions FCIC has revised section 3(d) by adding a new paragraph (4) that specifies the amount of insurance per acre remains the same for each year of the two-year coverage module unless the gross sales amount is assigned in accordance with section 3(f).

Section 6 – Report of Acreage

Comment: A commenter stated there is a fair amount of overlap and/or repetition in 6(a)(1), 6(b), and 6(c).

Response: The only change proposed in section 6 was to remove the percentage associated with the reporting of sequential thinning. FCIC has not proposed any changes with respect to the rewriting of the section. There is no conflict or vulnerability in the provision. Therefore, FCIC cannot consider the recommended change because the public was not provided an opportunity to comment. No change has been made to the final rule.

Section 8 – Insured Crop

Comment: A few commenters stated the proposed change to section 8(d) would drop the

minimum age requirement and make some revisions to the minimum production requirement of “at least 600 pounds of pecan in-shell per acre (or an amount provided in the Special Provisions) in at least one of the previous four crop years, unless we inspect and allow insurance by written agreement.” The commenters question under what circumstances the RMA Regional Office would consider insurance by written agreement for trees that have not produced at least 600 pounds per acre in at least one of the last four crop years. The commenters asked whether the intent is to consider exceptions in certain cases such as an orchard that has produced just under 600 pounds per acre, or met the minimum production requirement five years ago but not since.

Response: The RMA Regional Offices will determine eligibility for a written agreement. While it is not possible to list every possible situation that might warrant a written agreement, one such situation would be if an insurable cause of loss has caused the grove to fail to meet the minimum production requirement, but based on an inspection of the grove it is clearly capable of producing the minimum production requirement. This provision is not intended to allow exceptions to acreage that was not capable of meeting the minimum production requirement in at least one of the previous four years on a case by case basis.

Comment: A commenter requested clarification to section 8(e) in regard to types of pecan varieties as possibly being uninsurable or incompatible pollinators and the methodology for determining uninsurable or incompatible pollinators.

Response: The RMA Regional Office will use published research and loss experience data to determine what, if any, varieties or groups of varieties should be considered uninsurable because they are unreliable producers or incompatible pollinators. Any pecan varieties or groups of varieties determined to be uninsurable will be listed in a Special Provision statement. Producers should consult with the appropriate agricultural experts prior to planting pecan trees to ensure they are reliable producers and compatible pollinators.

Comment: A commenter stated the proposed section 8(d) would eliminate the need for the proposed new section 8(e) as any acreage not meeting the minimum level of production would already be considered uninsurable.

Response: FCIC disagrees the addition of the new section 8(d) eliminates the need for the new section 8(e). The provision in section 8(d) makes acreage not capable of producing the minimum production requirement ineligible for crop insurance coverage. This may simply be a function of the age of the trees, not the variety, and planting younger trees may allow the acreage to again be insurable. However, there may be certain varieties or groups of varieties that are not capable of producing the minimum production or may only be capable of occasionally producing the minimum production requirement. For these varieties or groups of varieties it may be necessary to exclude these from being insurable. For instance, it is possible a variety may be determined to be uninsurable if it is severely alternate bearing even under proper management or has characteristics which make it unsuitable for commercial production. No change has been made to the final rule.

Section 13 – Settlement of Claim

Comment: A commenter stated the background information in the proposed rule states “FCIC intends to provide additional guidance in the Pecan Revenue Loss Adjustment Standards Handbook (LASH) as to when a price should be considered inappropriate. The guidance will create a minimum threshold that the price received must meet and will be based on a percentage of the AMS price.” The commenter questioned whether it is sufficient to have that information in the LASH, or should some indication of that minimum threshold be included in the Crop Provisions.

Response: FCIC agrees it would not be appropriate to add a minimum threshold to the Pecan Revenue LASH without providing an indication of the minimum threshold in the Pecan Revenue

Crop Provisions. Therefore, FCIC has revised section 13(d)(2)(i) to indicate that unless otherwise provided in the Special Provisions and excluding pecans sold under contract, the price received will be not less than 95 percent of the lowest AMS price for the nearest location for similar quality, quantity, and variety of in-shell pecans published during the week the producer sells his or her pecans. If AMS prices are not published for the week the pecans were sold, the price received will be not less than 95 percent of the lowest price per pound for in-shell pecans of the same variety or varieties insured offered by buyers in the area in which the producer normally markets the pecans on the day the producer sells his or her pecans. Additionally, FCIC has amended the proposed provision to indicate that the market price will be used for direct marketed pecans in order to be consistent with section 10(d)(1).

Section 15 – Substitution of Yields

Comment: A commenter suggested revising section 15 to include that the substitution of yields provisions of the Basic Provisions are applicable (with the substitution of T-Revenue in lieu of the T-Yield). The commenter stated this change would give the insured the same protection as other crops by allowing an insured to substitute 60 percent of the applicable T-Revenue for actual revenue in order to mitigate effect of catastrophic years. With other crops, if a producer experiences a disaster and has an extremely low yield, that producer has the option of substituting 60 percent of the T-yield for the one actual yield to minimize the effect of that year on the approved production history. This is not an option for pecan producers. If a disaster occurs and causes a producer to have zero production, the insured's summary of revenue history and their approved average revenue are dramatically impacted. With this one simple change to the policy provisions, the needs of the producer are better met and the policy will be more similar to other crop provisions.

Response: No changes were proposed to the Substitution of Yields section and the proposed

change does not address a conflict or vulnerability in the provision. Therefore, FCIC cannot consider the recommended change because the public has not been provided an opportunity to comment of the requested change. No change has been made to the final rule.

In addition to the changes described above, FCIC has made minor editorial changes.

List of Subjects in 7 CFR Part 457

Crop insurance, Pecan Revenue, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2014 and succeeding crop years as follows:

PART 457 - COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR Part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

2. Amend § 457.167 as follows:

a. In the introductory text by removing “2005” and adding “2014” in its place;

b. In section 1 by:

i. Revising the definitions of “approved average revenue per acre” and “average gross sales per acre”;

ii. In the definition of “direct marketing” by adding the word “a” before the word “wholesaler”;

iii. Removing the definition of “enterprise unit”;

iv. Revising the definition of “market price”; and

v. Removing the definition of “set out”; and

vi. Adding in alphabetical order a definition of “transitional revenue (T-revenue)”;

c. Revise section 2;

- d. In the introductory text of section 3 by adding a comma following the phrase “In lieu of section 3 of the Basic Provisions”;
- e. Revise section 3(d)(1);
- f. In section 3(d)(2) by removing the phrase “lowest available dollar span amount provided in the actuarial documents” and adding the term “T-revenue” in its place;
- g. Add section 3(d)(4);
- h. Revise section 3(f)(1);
- i. In section 3(h) by adding a hyphen between the words “high” and “risk” in all four instances they appear;
- j. In section 4(b) by removing the phrase “the RMA website at <http://www.rma.usda.gov/> or a successor website” and adding the phrase “RMA’s Web site” in its place;
- k. In section 4(d) by adding a sentence;
- l. In section 6(a)(1) by removing the phrase “in excess of 12.5 percent of your insured acreage”;
- m. In section 6(a)(5) by removing the semicolon and adding a period in its place;
- n. In section 6(b) by removing the phrase “in excess of 12.5 percent of your insured acreage”;
- o. In section 8 by:
 - i. Revising paragraph (d);
 - ii. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g); and
 - iii. Adding a new paragraph (e);
- p. In section 11(a)(2) by adding a comma after the term “Fire”;
- q. Revise section 13(b);
- r. In section 13(d)(1)(i) introductory text by removing the semicolon at the end of the sentence and adding a colon in its place;

- s. Revise section 13(d)(2)(i); and
- t. Revise the pecan revenue example at the end of section 13.

The revisions and additions read as follows:

§ 457.167 Pecan revenue crop insurance provisions.

* * * * *

1. * * *

Approved average revenue per acre. The total of your average gross sales per acre based on the most recent consecutive four years of sales records building to six years and dividing that result by the number of years of average gross sales per acre. If you provide more than four years of sales records, they must be the most recent consecutive six years of sales records. If you do not provide at least four years of gross sales records, your approved average revenue will be:

(1) The average of the two most recent consecutive years of your gross sales per acre and two years of the T-revenue; or

(2) If you do not provide any gross sales records, the T-revenue.

Average gross sales per acre. Your gross sales of pecans for a crop year divided by your net acres of pecans grown during that crop year. For example, if for the crop year your gross sales were \$100,000 and your net acres of pecans were 100, then your average gross sales per acre for the crop year would be \$1,000.

* * * * *

Market price. The market price is:

(1) The average of the AMS prices for the nearest location for similar quality, quantity, and variety of in-shell pecans published during the week you sell any of your pecans, you harvest your pecans if they are not sold, or your pecans are appraised if you are not harvesting them, unless otherwise provided in the Special Provisions. For example, if you harvest production on

November 14 but do not sell the production, the average of the AMS prices for the week containing November 14 will be used to determine the market price for the production harvested on November 14; or

(2) If AMS prices are not published for the week, the average price per pound for in-shell pecans of the same variety or varieties insured offered by buyers on the day you sell any of your pecans, you harvest any of your pecans if they are not sold, or your pecans are appraised if you are not harvesting them, in the area in which you normally market the pecans (If buyers are not available in your immediate area, we will use the average in-shell price per pound offered by buyers nearest to your area).

* * * * *

Transitional revenue (T-revenue). A value determined by FCIC and published in the actuarial documents.

* * * * *

2. Unit Division.

Except as provided in these Crop Provisions, for both years of the two-year coverage module a unit will be:

(a) In addition to the requirements of section 34(a)(4) of the Basic Provisions, an enterprise unit if the insured crop is located on at least two parcels of non-contiguous land and at least two of the parcels must contain at least the lesser of 20 acres or 20 percent of the insured crop acreage in the enterprise unit;

(b) A basic unit as defined in section 1 of the Basic Provisions; or

(c) In lieu of the requirements contained in sections 34(b) and (c) of the Basic Provisions, basic units may be divided into optional units if, for each optional unit, the following criteria are met:

(1) Each optional unit you select must be located on non-contiguous land;

(2) Separate records of production are provided for at least the most recent consecutive two crop years. The records will be used to verify that trees from each unit meet the minimum production requirement contained in section 8(d) and to establish the approved average revenue per acre for the optional units selected; and

(3) Optional units are selected and identified on the acreage report by the acreage reporting date of the first year of the two-year coverage module. Units will be determined when the acreage is reported, but may be adjusted or combined to reflect the actual unit structure when adjusting a loss. No further unit division may be made after the acreage reporting date for any reason.

3. * * *

(d) * * *

(1) You fail to provide acceptable records necessary to determine a loss for optional units. This will result in optional units being adjusted or combined to reflect the actual unit structure at the time of discovery. Your amount of insurance per acre will be recalculated for the current crop year and the subsequent crop year of the two-year coverage module (provided another year remains in the two-year coverage module).

* * * * *

(4) Your gross sales amount is assigned in accordance with section 3(f).

* * * * *

(f) * * *

(1) If you do not report your gross sales in accordance with this paragraph, we will assign a gross sales amount for any year you fail to report and you will not be eligible for optional units for both years of the two-year coverage module. The gross sales amount assigned by us will be

not greater than the T-revenue for the current coverage module.

* * * * *

4. * * *

(d) * * * If available from us, you may elect to receive these documents and changes electronically.” following the sentence, “If changes are made that will be effective for a subsequent two-year coverage module, such copies will be provided not later than 30 days prior to the cancellation date.

8. * * *

(d) That are grown on trees that have produced at least 600 pounds of pecans in-shell per acre (or an amount provided in the Special Provisions) in at least one of the previous four crop years, unless we inspect and allow insurance by written agreement. This amount of production must be achieved subsequent to any top work that occurs within a unit;

(e) That are grown on varieties or a grouping of varieties within a unit that are not designated as uninsurable in the Special Provisions;

* * * * *

13. * * *

(b) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable records for any:

(1) Optional unit, we will combine all optional units for which such records were not provided and this will be the unit structure the current crop year and the subsequent crop year of the two-year coverage module (provided another year remains in the two-year coverage module);
or

(2) Basic unit, we will allocate commingled production or revenue to each basic unit in proportion to our liability on the harvested acreage for each unit.

* * * * *

(d) * * *

(2) * * *

(i) The dollar amount obtained by multiplying the number of pounds of pecans sold by the price received for each day the pecans were sold. (If the price received is not verifiable by sales receipts or if the pecan production was direct marketed, the market price will be used. Unless otherwise provided in the Special Provisions, and excluding pecans sold under contract, the price received will be not less than 95 percent of the lowest AMS price for the nearest location for similar quality, quantity, and variety of in-shell pecans published during the week you sell your pecans. If AMS prices are not published for the week the pecans were sold, the price received will be not less than 95 percent of the lowest price per pound for in-shell pecans of the same variety or varieties insured offered by buyers in the area you normally market the pecans or the area nearest to you if prices are not available in your immediate area on the day you sell your pecans.);

* * * * *

Pecan Revenue Example

		AVERAGE	
		AVERAGE	GROSS
		POUNDS	SALES
<u>YEAR</u>	<u>ACRES</u>	<u>PER ACRE</u>	<u>PER ACRE</u>
4	100	750	\$1,050
3	100	625	\$ 625
2	100	1250	\$ 750
1	100	200	\$ 250

Total Average Gross Sales Per Acre =	\$2,675
--------------------------------------	---------

The approved average revenue equals the total average gross sales per acre divided by the number of years ($\$2,675 \div 4 = \669).

The amount of insurance per acre equals the approved average revenue multiplied by the coverage level percent ($\$669 \times .65 = \435).

Assume pecan trees in the unit experienced damage to blooms due to a late freeze causing low production. You produced, harvested, and sold 300 pounds per acre of pecans from 70 acres and received an actual price of \$0.75 per pound. On the other 30 acres, the pecans suffered damage due to drought. You elected not to harvest the other 30 acres of pecans. The 30 acres were appraised at 100 pounds per acre and on the day of the appraisal the average AMS price was \$0.65. The total dollar value of production to count is $(300 \text{ pounds of pecans} \times 70 \text{ net acres} \times \$0.75) + (100 \text{ pounds} \times 30 \text{ net acres} \times \$0.65) = \$15,750 + \$1,950 = \$17,700$.

The indemnity would be:

The amount of insurance per acre multiplied by the net acres minus the dollar value of the total production to count equals the dollar amount of indemnity ($\$435 \times 100 = \$43,500.00 - \$17,700.00 = \$25,800$).

* * * * *

Signed in Washington, D.C., on _February 19, 2013.

Brandon Willis
Acting Manager
Federal Crop Insurance Corporation

[FR Doc. 2013-04468 Filed 02/27/2013 at 8:45 am; Publication Date: 02/28/2013]